BANK BUMIPUTRA (M) BHD. & ANOR.

v.

LORRAIN ESME OSMAN

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[CIVIL SUIT C138 OF 1985]
4 JUNE 1990

CIVIL PROCEDURE: *Mareva injunction - Application for discharge or variation - Principles of dissolution of Mareva injunction - Whether same principles apply to Anton Piller order - Whether injunction had resulted in diminution of assets rather than their preservation - Whether injunction has become an instrument of oppression - Appointment of receiver to manage defendant's affairs - Rules of the High Court 1980, O. 34 r. 2, O. 35 r. 3, O. 38 r. 2, O. 39.*

The defendant applied to the Court to discharge the Mareva injunction obtained by the plaintiffs on the ground that having substantially prejudiced his interests on a personal and commercial basis, the plaintiffs took no step to prosecute their civil claim with diligence as required by law to sustain the said injunction. The defendant alleged that the Mareva injunction, granted five years ago, had in effect become an instrument of oppression against him; they had in fact caused a diminution of his assets rather than preserving them.

The plaintiffs denied that they were not diligent. They said that there were several occasions when the trial date fixed by the Court had been vacated on the defendant's application.

The defendant also applied, in the alternative, to have the Mareva injunction varied to allow him to take from his assets in Malaysian ringgit equivalent to sterling £220,000 for legal expenses outstanding and to be incurred in the future. The defendant contended that under the law he was entitled to a variation of the Mareva injunction to draw sufficient funds for legal expenses.

Held:

[1] A Mareva injunction is no doubt a draconian remedy; delay in setting down for trial is a most relevant consideration for the Court to decide whether a Mareva injunction should be dissolved.

[2] A plaintiff who had obtained a Mareva injunction is under an obligation to press on for the trial of his action as soon as he can; if he failed to act diligently, the Court would exercise its discretion and dissolve the injunction; the same principles apply to an Anton Piller order.

[3] On the basis of evidence adduced in Court, the Court is satisfied that the plaintiffs had acted promptly and diligently to press the action for trial.

[4] The first and second trial dates were vacated at the defendant's request; when the defendant's application to strike out the plaintiffs' writ and statement of claim was dismissed, the defendant had filed an appeal. A date of hearing was given by the Supreme Court but was vacated by the Supreme Court itself. Another hearing date was given but the defendant applied to have the date vacated. In due course, the defendant informed the plaintiffs that the appeal had been withdrawn.

[5] Pending the disposal of the defendant's appeal in the Supreme Court, it was not practical to set the case for trial; in the circumstances, the delay in the trial of the action is not attributed to the plaintiffs; the defendant's application to dissolve the Mareva injunction therefore cannot succeed.

[6] With regard to the defendant's alternative application to have the Mareva injunction varied to enable him to draw sufficient funds from his assets for legal expenses, the burden is on the defendant to satisfy the Court of the detailed value of his assets in the United Kingdom and how he used those assets to pay what he claimed to be his legal expenses; secondly, the burden is on the defendant to prove that he has no more assets outside Malaysia; thirdly, he has to show that the payment of a liability out of the assets in Malaysia is not in conflict with the policy which underlines the granting of the Mareva injunction.

[7] In the circumstances of the case, the defendant has failed to discharge the burden of proof placed upon him; however, in respect of two matters - the fourth *habeas corpus* application which is due for hearing and the defendant's legal expenses in respect of his case in the European Court for Human Rights, it is appropriate for the Court to allow him to use his assets within this jurisdiction for the amount asked for by the defendant.

[Application for dissolution of Mareva injunction dismissed. Application to vary the injunction allowed in the sum of sterling £50,000.]

Cases referred to:
Lloyds Bowmaker Ltd. v. Britannia Arrow Holdings plc. (Lavens, third party) [1988] 3 All ER 178
House of Spring Gardens Ltd. & Anor. v. Waite [1984] FSR 288
PCN (Underwriting Agencies) Ltd. v. Dixon & Anor. [1983] 2 All ER 158
A v. C [1981] 1 Lloyd's Rep 559

Legislation referred to:
Rules of the High Court 1980, O. 38 r. 2

Other source referred to:
White Book, p. 567

JUDGMENT

Zakaria Yatim J:

This is an application by the defendant, Lorrain Esme Osman (Lorrain) for an order that the injunctions dated 10 January 1985 and 15 January 1985 be dissolved. Alternatively, Lorrain asks the Court that the said injunctions be varied to allow him to take from his assets in Malaysian Ringgit in the sum equivalent to sterling £220,000 for legal expenses outstanding and to be incurred in the near future. He further asks that he be given leave to utilise the balance of the proceeds, after payment of all debts and other outgoings from the sale of any property/properties in his name and/or in the name of companies owned or controlled by him for the payment of the said legal expenses. He also asks that the costs of this application be provided for.

The application is supported by Lorrain's affidavit affirmed by him at Pentonville Prison, London on 6 April 1990. (hereinafter referred to as ("Lorrain's affidavit").

I shall deal with the application to dissolve the injunctions first.

In Lorrain's affidavit, he began by setting out his personal history. He was born in Penang in 1931. After a short period of formal education in Singapore after the war, he attended Cambridge University, where he obtained his degree in law. He was called to the Bar in 1956 at Lincoln's Inn and returned to practice in Malaysia. He became a partner of a firm of advocates and solicitors, which was established in Kuala Lumpur and Singapore. In 1968 he gave up practice as a lawyer and went into business on a full time basis. His primary interests were in relation to property development and investment. As his business interests grew, he

diversified from mainly property-based interests into manufacturing, the distribution and assembly of motor vehicles, travel and tourism and horticultural activities. In the early 1980's, he controlled about twenty-five active companies which were involved in these diversified businesses and almost all of his wealth and time were devoted to the acquisition and management of these businesses. From the time he left private practice he had rendered public service for the Government of Malaysia in a number of appointments. He was chairman of the Malaysian National News Agency (BERNAMA); member of the National Consultative Council; member of the Council of the Federal Territory of Kuala Lumpur; member of the Prime Minister's Economic Advisory Body; member of the Executive Council of the Tourist Development Council; and a director of Food Industries of Malaysia ("FIMA"), a government-owned agricultural promotions corporation and also chairman of several of its subsidiaries. He was also instructed by the then Deputy-Prime Minister (later to be the second Prime Minister of Malaysia), Tun Abdul Razak, to incorporate Bank Bumiputra Malaysia Berhad (the Bank), and at the Deputy Prime Minister's request, he became one of the original subscribers to the memorandum and articles, and one of the original directors of the bank. In addition, he was the non-executive chairman of several of the bank's subsidiaries.

Lorrain added that he had concentrated his entire professional and business energies in legal practice and commercial enterprises within Malaysia and had committed a good part of his "personal" resources towards public service. Consistent with, and as a result of his long-standing commitment in this respect, all but a small part of the assets which he had built up during his life are situated in Malaysia, and most of which are held through companies - the Aspatra Group of companies being his flagship.

Lorrain alleged in para. 8 of the affidavit that the plaintiffs had obtained a wide-sweeping injunction which had the effect of curtailing, significantly the operations, and brought about the failure, of many of the companies within his group. He added that some of the companies which had failed as a result of the Mareva injunction were as follows:

(i) Orient Air Transport Sdn. Bhd. This company was involved in the travel and airline ticketing business. The company was unable to operate after its accounts were frozen by the Mareva injunction; the most serious consequence was the company's inability to pay the airlines within the strict time limits imposed by them as an essential condition for the supply of their tickets. Due to the publicity, even after the injunction was varied to enable the company to carry on trading, debtors did not pay and many people refused to deal with the company because of their lack of confidence that the company could deliver the tickets.

(ii) Aspatra Motors Sdn. Bhd. This company was involved in the marketing of Saab cars. As a result of the adverse publicity and lack of public confidence, particularly important in the motor industry because of the customers' concern with after-sales service, this company had become insolvent.

(iii) The Lodge Sdn. Bhd. This company never recovered from the crippling effects of the Mareva injunction and is now defunct.

(iv) Orchids Malaysia Sdn. Bhd. This company has been unable to raise funds for reinvestment in land planting material as a result of the adverse publicity and is barely surviving.

Lorrain further alleged in para. 9 of the affidavit that the Mareva injunction, by its far-reaching consequences, had resulted in a diminution of the value of his assets, rather than its preservation. He added that having obtained the injunction, the plaintiffs had not proceeded

and/or prosecuted the present action diligently, thereby continuing to cause even greater prejudice to his commercial business and personal interests. According to him, the injunction has now become an instrument of oppression.

In para. 10 of the affidavit he averred that he instructed his Malaysian solicitors, Messrs James Foong and Anad to search the Court file in this matter. He was advised by Mr. Anad Krishnan, a partner of his firm of solicitors, that the chronology of proceedings was as follows:

a. The writ and statement of claim was filed on 10 January 1985.

b. The statement of defence was filed on 21 December 1985.

c. The plaintiffs took out a summons for directions seeking various orders, including an order for further and better particulars of the defence, and an order for early trial.

d. Upon service of the summons for directions, my then solicitors gave notice that they would want further and better particulars of the plaintiffs' statement of claim.

e. The summons for directions was heard on 24 January 1986 by the learned Justice Dr. Zakaria bin Mohd. Yatim.

f. The learned Judge upon hearing the summons for directions made various orders and granted the plaintiffs' application for an order for early trial and in fact proceeded to fix the suit for hearing from 1 July 1986 to 25 July 1986.

g. The applications for further and better particulars by both parties were adjourned to 19 March 1986 for hearing.

h. The plaintiff's application for further and better particulars of the defence was heard on 19 March, and 22 April 1986, following which an order was made directing him to supply the requested particulars. The defendant's application for further and better particulars was adjourned *sine die*, by consent of the parties.

i. On or about 18 March 1986, my solicitors applied to strike out these proceedings. On or about 15 December 1986, the application was heard and judgment was delivered by Justice Dato Zakaria bin Mohamed Yatim dismissing my application with costs.

j. On or about 9 January 1987 an appeal was filed. It is my intention to withdraw this appeal on the advice of my legal advisers and I have instructed them to do so forthwith.

According to Lorrain, without in any way advancing the plaintiffs' claim so that it could be tested on the merits, the only other step taken by the plaintiffs was an application to the Court for a receiver to be appointed to "manage" his affairs and those of his companies subject to the Mareva injunctions. He alleged that the plaintiffs' application was made without any basis and could only be regarded as yet another attempt to impose further oppression on him and his interests, and which could only lead to a further diminution, if not destruction, of his assets and interests. Lorrain said that he had instructed his solicitors to apply to strike out that application. That application is now pending before this Court.

Lorrain contended in the affidavit that it would be appropriate for this Court to discharge the Mareva injunctions entirely on the basis that, having substantially prejudiced his interests on both a personal and commercial basis, the plaintiffs had taken no steps to prosecute their civil claims with anything akin to the diligence required by the law to sustain the said injunctions. He alleged that their tardiness in this matter had and continued to cause him further damage.

Mr. Anad Krishnan, Counsel for Lorrain, after reading Lorrain's affidavit submitted that nothing positive was done by the plaintiffs to enter the matter for trial. For that reason, he said and taking into account that the Mareva injunctions had an adverse and oppressive

effect on Lorrain, the Court should dissolve the injunctions. He further submitted, "...We are five years after the granting of the Mareva and we are nowhere hearing the suit..." In support of his submission he cited the decisions of the English Court of Appeal in *Lloyds Bowmaker Ltd. v. Britannia Arrow Holdings plc. (Lavens, third party)* [1988] 3 All ER 178 and in *Daisystar Limited and Town and Country Building Society & Anor.* (unreported).

Mr. Wong Chong Wah, Counsel for the plaintiffs denied that the plaintiffs had not taken diligent steps to prosecute this case. He referred to Lorrain's application filed on 18 March 1986. In that application, Lorrain sought the order of the Court that the writ of summons and statement of claim in this action be struck out on the ground that the writ and statement of claim disclosed no reasonable cause of action and/or was vexatious and/or was an abuse of the process of the Court. Alternatively, Lorrain asked the Court to stay the action on the ground that the Courts in Hong Kong being the natural forum and/or the *forum conveniens* before which the action should be tried. Lorrain alleged that the continuance of the action before the High Court of Malaya was vexatious and/or an abuse of the process of the Court. In the same application he also asked that the dates fixed for the trial of this action be vacated and that there be liberty to both parties to apply for a new date for the said trial. The application was supported by the affidavit of one Sonni Pillai affirmed on 18 March 1986. Mr. Wong Chong Wah referred to paras. 8 and 9 of Sonni Pillai's affidavit. In these two paragraphs, Mr. Sonni Pillai gave the reasons why the dates fixed for the trial of this action be vacated.

Mr. Wong Chong Wah also referred to an affidavit affirmed by an officer of the bank, Johari bin Zakaria on 26 August 1986. According to that affidavit on 24 January 1986, this action was set down for trial from 1 to 25 July 1986. On 29 May 1986 the trial dates were vacated on Lorrain's application. New trial dates of the action were fixed by the Court from 3 to 28 November 1986. According to Mr. Wong Chong Wah, after Lorrain's application was heard the Court delivered a written judgment dismissing Lorrain's application to strike out the writ and statement of claim and for stay of proceedings in this suit with costs (see [1978] 2 MLJ 633). Immediately after the judgment Lorrain appealed to the Supreme Court. Mr. Wong Chong Wah submitted that the Supreme Court fixed the date for the hearing of the appeal on 13 June 1988. This date was, however, vacated by the Supreme Court itself to make way for the UMNO appeal. The Supreme Court then fixed the date of the hearing of the appeal on 12 June 1989. Mr. Wong Chong Wah said the defendant asked for adjournment of the hearing of the appeal on that date on the ground that the defendant did not have sufficient time to get a QC to appear at the hearing. He submitted that as long as the appeal before the Supreme Court was pending it would serve no purpose for the plaintiff to ask the Court to fix another trial date. So the plaintiff waited for the Supreme Court to dispose of the appeal.

Having stated the arguments of both Counsel for Lorrain and for the plaintiffs, I shall now consider the principle of the law relating to an application to dissolve a Mareva injunction in the context of Lorrain's present application. In my view the two cases cited by Mr. Anad Krishnan *viz. Lloyds Bowmaker* and *Daisystar* are relevant to the present case.

In *Lloyds Bowmaker* case, Glidewell LJ in his judgment at pp. 185 and 186 said:

> Counsel for Mr. Lavens argues however, that it is at this stage that delay does become relevant. He points out that it is now over two and a half years since the third party proceedings were commenced, and, although the summons for directions was over two years ago, neither the action nor the third party proceedings have been set down for trial. I agree with him that this is a most relevant consideration. A Mareva injunction, as Sir John Donaldson MR said in the *Bank Mellat* case...is a draconian remedy. It is intended as an adjunct to the

action itself, not as a substitute for relief to be obtained on trial. In other words, a plaintiff who succeeds in obtaining a Mareva injunction is in my view under an obligation to press on with his action as rapidly as he can, so that, if he should fail to establish liability in the defendant, the disadvantage which the injunction imposes on the defendant will be lessened so far as possible. There is no sign that the defendants in the present case have been active in pressing ahead with these proceedings.

It is not for this Court to direct whether or not Britannia Arrow should make another application for a fresh Mareva injunction. Certainly, if they do so, the factors to which I have just referred, amongst other matters, should no doubt be taken into account by the Judge who hears the application; but for my part I am persuaded that we should not grant a fresh Mareva injunction ourselves, and that we should not, because the delay, take any other steps to preserve the *status quo*.

Accordingly, I would allow the appeal and discharge the existing injunction.

Dillon LJ in the same at p. 188 also said as follows:

But in the present case a further important factor comes in at this stage. The Mareva injunction was granted on 20 August 1984. It is a very onerous injunction which has hung over Mr. Lavens for two and a half years, with the attendant expense of applying from time to time for relaxations, but the action is not yet set down. Britannia Arrow say that that is in part due to delay or prevarication on the part of Mr. Lavens in answering interrogatories in aid of discovery as to what has happened to money he received from Hamilton Leasing in respect of equipment which he, or his company, supplied to Britannia Arrow. But the directions for setting down were given before 1984 expired. They have been ignored; nothing has happened.

Britannia Arrow have been content to leave Mr. Lavens tied up indefinitely in the toils of the Mareva injunction. For a party to do that when an Anton Piller order had been obtained was strongly disapproved in *Hytrac Conveyors Ltd. v. Conveyors International Ltd.* [1982] 3 All ER 415, [1983] 1 WLR 44, a decision of this Court affirming a decision of Whitford J. Precisely the same considerations, in my judgment, apply in relation to a Mareva injunction; where a party has obtained a Mareva injunction, that party is bound to get on with the trial of the action, not to rest content with the injunction. The injunction is merely ancillary to the trial of the action to hold the position until the action comes on for trial.

In my judgment, therefore, Britannia Arrow have been wrong in resting on the Mareva injunction, and the discretion of the Court should not be exercised in their favour by granting some stay on the discharge of the injunction or by this Court granting a fresh injunction. Accordingly, I would simply allow this appeal and discharge the injunction.

The decision in *Lloyds Bowmaker* case was followed by in *Daisystar* case. In his judgment in *Daisystar* case, Dillon LJ said:

There was no step taken in the action for many months. Indeed it would seem that the Building Society was content to leave the action dormant indefinitely at that stage, resting on the benefit of the Mareva injunction...

The only other procedural step that has been taken on the counterclaim concerns interrogatories. On 6 April 1989 the Building Society's solicitors asked for interrogatories by letter.

There was no answer at that stage. A notice of motion for leave to serve interrogatories was therefore issued by the Building Society on 7 May 1989 and that was adjourned to come before the Judge at the same time as Mr. Raja's notice of motion to discharge the Mareva injunction. The Judge then ordered certain of the interrogatories. These have been answered. They do not advance matters very noticeably. He refused the application for others. That is not before us on this appeal.

It is also right to mention, to continue the procedural history, that on 22 March 1988 Daisystar and Mr. Raja issued a fresh writ, followed by a statement of claim on 24 May, attacking the validity of the Society's mortgages obtained through Mr. Cornelius in March 1986 on substantially the grounds set out in the counterclaim in the action originally in the Brighton County Court concerning Mr. Raja's home, 13 Windlesham Road. Such is the pattern of the litigation.

The impression that I get, without any hesitation, is that this is a case where the Building Society was content with its securities obtained through Mr. Cornelius until the action was begun by Daisystar. It then launched the counterclaim and obtained the Mareva injunction. It was content with that position and did nothing to forward the action beyond serving the further and better particulars of the counterclaim through the end of 1987 and the first half of 1988. It was then reinforced in its belief that Mr. Raja was not worth pursuing and again did nothing but retain the benefit of the Mareva, until it suddenly occurred to the Building Society after the telephone call and letter of December 1988 that there might be some further money in the assets that were not in mortgage to the Building Society, which might be tapped off if the Building Society relied sufficiently on its Mareva injunction to monitor the movements of money...

In my judgment it is an abuse of the process of a Mareva injunction to obtain the injunction, then not get on with prosecuting the action, but then to desire to hold the injunction and start prosecuting the action afresh if it appears that there may be a prospect of getting security ahead of others through the use of the Mareva on assets which are not the subject of any charge in favour of the litigant who holds the Mareva. That is particularly glaring in the present case when, through the activities of Mr. Cornelius, the Building Society was able to obtain all the security which it thought it required at that stage for the monies which had gone out through Davies Brown and Co. to Mr. Raja. The Building Society was content with the mortgages which it had obtained, until the issue of the writ by Daisystar...

In my judgement, with respect to the Judge, he has misdirected himself. He has concentrated altogether too much on the minutiae of the steps taken in relation to the striking out of Daisystar's claim and the bankruptcy proceedings, and has failed to appreciate the use that the Building Society was making of the Mareva and has failed to appreciate the effect in relation to the Mareva of the conclusion that the Building Society had reached that Mr. Raja was not worth pursuing. I do not think it is right that a litigant who obtains a Mareva injunction, and in the light of the information that it obtains as a result of the Mareva, concludes, as it had indeed suspected before, that the party against whom the Mareva was obtained was not worth pursuing when challenged and have the Mareva continued indefinitely.

In my judgment the Judge, with respect, was plainly wrong in his exercise of discretion and this appeal should be allowed on the undertaking offered by Mr. Raja not to transfer assets out of the jurisdiction, and the Mareva discharged. It follows as a consequence, because it was conceded in the Court below, that the inhibitions registered against Mr. Raja's properties, in so far as they are still outstanding, should be discharged.

Farqubarson LJ in the same case also said:

It is the duty of a litigant in a case where a Mareva injunction has been granted, to press on with his claim so that the other party is subject to the order for the minimum amount of time necessary and not kept in limbo. If such a litigant does not for any reason wish to proceed with his claim, even temporarily, then he ought on his own motion seek the discharge of the injunction from the Court.

From the passage quoted above the principle laid down in the two cases may be summarised as follows: A Mareva injunction is no doubt a draconian remedy. It is intended as an adjunct to the action itself, not as a substitute for relief to be obtained on trial. Delay in setting down the action for trial is a most relevant consideration for the Court in deciding whether or not a Mareva injunction should be dissolved. The plaintiff who obtained a Mareva

injunction is under an obligation to press on for the trial of his action as soon as he can. If he took no active steps to set the case for trial and instead rested on the Mareva injunction, the Court would exercise its discretion and dissolve the Mareva injunction. The same principle applies to an Anton Pillar Order.

I shall now examine what steps have been taken by the plaintiffs to set down the case for an early trial. In doing so, it is necessary to set out the sequence of events which had taken place in this action. Paragraphs 5, 6 and 7 of Johari's affidavit, referred to by Mr. Wong Chong Wah, have set out the history of the action from the time the writ and the statement of claim were filed up to 29 May 1986. I now reproduce below the three paragraphs in Johari's affidavit:

5.		**PART I**
(1)	10/1/1985	Statement of claim filed. Summons in chambers filed. Mareva injunction granted by High Court against Lorrain personally.
(2)	15/1/1985	Summons in chambers filed. Mareva Injunctions extended to cover banking accounts of one hundred and four companies (104) belonging to and/or associated with Lorrain.
		Anton Piller orders granted against Lorrain and Aspatra Sdn. Bhd.
(3)	17/1/1985	Summons in chambers filed. Anton Piller orders extended to cover all persons for the time being in charge of premises belonging to Lorrain and/or Aspatra Sdn. Bhd.
(4)	19/1/1985 to 18/2/1985	Twenty-two (22) companies applied by summons in chambers to vary or set aside Mareva injunctions and Anton Piller orders.
(5)	24, 25, 28 & 29/1/ 1985 5-7, 14 & 18/2/1985:	Hearing of applications to set aside Mareva injunctions and Anton Pillar orders.
(6)	26/4/1985	Delivery of judgment by Zakaria J.
(7)	17/6/1985	Notice of appeal by twenty-two companies to Supreme Court.
(8)	29/7/1985	Record of appeal filed in Supreme Court Civil Appeal 212/85 (912 pages).
6.		**PART II**
(9)	5/2/1985	Summons in chambers filed by plaintiffs to serve writ on Lorrain by substituted service.
(10)	8/2/1985	Order by Senior Assistant Registrar granting leave to serve by substituted services
(11)	18/2/1985	Affidavit of service of writ.
(12)	1/3/1985	Memorandum of conditional appearance filed on behalf of Lorrain...to set aside service of writ and order of substituted service.
(13)	14/3/1985	Summons in chambers filed by Lorrain to set aside service of Writ and order granting leave to serve by substituted service.
(14)	3/5/1985	Hearing before Zakaria J.
(15)	11/9/1985	Delivery of judgment by Zakaria J.

(16) 23/9/1985	Notice of appeal by Lorrain to the Supreme Court.
(17) 12/10/1985	Appeal record filed on behalf of Lorrain in Supreme Court Civil Appeal 302/85.
(18) 1/11/1985	Supreme Court dismisses appeal and orders Lorrain to file defence within twenty-one (21) days of order.

PART III

(19) 21/11/1985	Defence filed on behalf of Lorrain.
(20) 22/11/1985	Plaintiffs' request for further and better particulars of defence.
(21) 2/12/1985	Summons for directions filed.
(22) 16/1/1986	Lorrain's request for further and better particulars of statement of claim.
(23) 24/1/1986	Zakaria J, grants usual orders on the hearing of summons for directions. Trial dates for the action fixed between 1 and 25 July 1986.
(24) 24/3/1986	Lorrain's application for admission of Colin Ross-Munro, QC as leading Counsel filed.
(25) 7/4/1986	Zakaria J admits Colin Ross-Munro, QC to appear as leading Counsel on behalf of Lorrain.
(26) 7/5/1986	Plaintiff's application for admission of John Chadwick, QC as leading Counsel filed.
(27) 16/5/1986	Zakaria J admits John Chadwick, QC to appear as leading Counsel on behalf of the plaintiffs.
(28) 29/5/1986	Zakaria J vacates trial dates in July 1986 on Lorrain's application. New trial dates of action fixed from 3 to 28 November 1986.

It will be noted that on 5 February 1985 the plaintiffs filed an application to serve the writ on Lorrain by substituted service. On 8 February 1985 the Senior Assistant Registrar made an order granting leave to serve the writ by way of substituted service. After the affidavit of service was filed, Lorrain's solicitors Messrs. R.R. Chelliah Brothers entered conditional appearance for Lorrain on 1 March 1985 without prejudice to his application to set aside the service of the writ and the order for substituted service dated 8 January 1985.

On 14 March 1985, Lorrain filed an application to set aside (i) the order for substituted service made by the Senior Assistant Registrar on 8 February 1985 and (ii) the service of the writ. The application was heard by me on 3 May 1985 and on 11 September 1985, I delivered a written judgment dismissing the application with costs. I also ordered that Lorrain file his defence within twenty one days from the date of the judgment. (See [1986] 1 MLJ 426). Lorrain then appealed to the Supreme Court. On 1 November 1985 the Supreme Court dismissed his appeal and ordered him to file his defence within twenty one days from the date of the order. On 21 November 1985 Lorrain filed his defence. On 2 December 1985 the plaintiffs filed their summons for directions, which was heard on 24 January 1986. Trial dates for the hearing of the action were then fixed between 1 July and 25 July 1986.

It can be seen that about ten days after Lorrain filed his defence, the plaintiffs filed their summons for directions and about two months after the defence was filed the action was set down for trial. In my view the plaintiffs had acted promptly and diligently to press the action for trial.

After the action was set down for trial, Lorrain, on 18 March 1986, filed an application referred to by Mr. Wong Chong Wah earlier *viz.*, to strike out the writ and statement of claim in this suit and alternatively to stay the proceedings on the ground that the Courts of Hong Kong

were the natural forum and/or the *forum conveniens*. In the same application he also asked for the trial dates to be vacated.

On 29 May 1986, when Lorrain's application came up for hearing, his Counsel, Miss Mary Sitravelu, asked the Court to hear the application to vacate the trial dates first and that the hearing of the other prayers be deferred to another date. She submitted that the reason why Lorrain asked for the trial dates to be vacated was to enable him to attend this Court and give vital evidence at the trial. According to Miss Mary, Lorrain could only do so after the conclusion of the extradition proceedings in London. Miss Mary also relied on Sonni Pillai's affidavit in support of Lorrain's application to vacate the trial dates. In paras. 8 and 9 of his affidavit, Sonni Pillai gave the reasons why the trial dates should be vacated. The two paragraphs state as follows:

> 8. I respectfully refer to para. 2 of the summons. If this Honourable Court does not grant the relief sought in para. 1 of the summons, I respectfully submit that it would be appropriate for the relief sought in para. 2 of the summons to be granted for the reasons set out in para. 9 hereinbelow.
>
> 9. It is vital that Lorrain gives evidences in this action. I am informed by Ian Isaac Rosenblatt who is Lorrain's English solicitor and verily believe the following facts and matters. Lorrain was arrested in England on 6 December 1985 and he has been in prison in England since that date awaiting the hearing of the extradition proceedings that are being brought against him by the Government of Hong Kong. The extradition proceedings are due to start being heard on 27 May 1986. They are to last approximately one month. Lorrain is most unlikely to be released from prison before the conclusion of the extradition proceedings.
>
> If Lorrain is ordered to be extradited at the conclusion of the hearing it is most likely that an application for a writ of *habeas corpus* would be made on his behalf to the English Divisional Court and if that application is unsuccessful there could be an appeal therefrom to the English House of Lords. Judgment of the Divisional Court would not be likely to be given before the end of July 1986 or even October 1986 and if there was thereafter an appeal to the House of Lords that would take considerably longer. During all this time it is most unlikely that Lorrain would be released from prison. If Lorrain is eventually extradited to Hong Kong it seems probable that his trial there would not take place for some considerable time, that it would be lengthy, that there might be appeals and that he would not be able to leave Hong Kong while these events were taking place. The Hong Kong Government has indicated in Court in the extradition proceedings that they propose to rely on the evidence of more than 100 witnesses and to produce more than 10,000 documents in these proceedings. Plainly Lorrain and his legal advisers will be very heavily involved in the extradition proceedings and the preparations therefore for some considerable time. I respectfully submit that it would be just in the circumstances for the relief sought in para. 2 of the summons to be granted.

Mr. T. Thomas, Counsel for the plaintiffs strongly opposed Lorrain's application to vacate the trial dates. In his submission he said:

> We say factors for Court to consider in exercising discretion under O. 35 r. 3 on inherent jurisdiction:
>
> (1) Is there injustice to plaintiff if trial date vacated. Magnitude of claim - $27.6 million.
>
> (2) Mareva injunction granted against Lorrain and about 90 of his companies.
>
> If plaintiffs lose action at trial damages which will follow considerable. Therefore injustice to the plaintiff. Injustices to defendant probably he can't be present at the trial. I submit that July date should stay. However, if Court minded to give adjournment ask for adjournment before end of year. I submit plaintiffs should be allowed to conduct their case in ordinary way by calling witnesses. This can take place in July or other date. No prejudice to Lorrain

because he has Counsel to cross-examine plaintiffs witnesses. Plaintiff will then close their case. Then Lorrain can ask for short adjournment. Lorrain's evidence - he can present his evidence by affidavit under O. 38 r. 2. *White Book supra* p. 567. If plaintiffs want to cross-examine him Lorrain can present his evidence under O. 39. Ask Court to refuse application and continue July trial or if Court is to adjourn - adjourn for five to six months...

After hearing the submissions of Miss Mary and Mr. Thomas I allowed Lorrain's application and ordered that the trial of the action be adjourned to 3 - 28 November 1986. I allowed the application in view of what was stated in Sonni Pillai's affidavit. Furthermore there was an application before this Court to strike out the plaintiff's writ and statement of claim. If Lorrain succeeded in striking out the writ and statement of claim, the question of fixing trial dates would not arise. In any event the trial dates were only adjourned to November 1986 and in my view no injustice would be done to the plaintiffs by such a short adjournment.

Thus, it was Lorrain who asked the July trial dates to be vacated. The plaintiffs cannot therefore, be blamed for the dates to be vacated.

The hearing of the other prayers in Lorrain's application commenced on 10 September 1986 and it continued for a week. At the close of his submission, Mr. Collin Ross Munro QC, Counsel for Lorrain, made an oral application to the Court that the hearing of this suit be adjourned with liberty to either side to apply. Mr. Thomas replied, "...We have no objection to vacate November date." I then adjourned this suit with liberty to apply by either side. Mr. Anad Krishnan disputed that the November dates were vacated at Lorrain's request. What I have stated above is from the record of the proceedings of Lorrain's application to strike out the writ and statement of claim etc. The November dates were therefore vacated at the request of Lorrain's Counsel.

On 15 December 1986 I delivered a written judgment dismissing the application to strike out the writ and statement of claim in this suit and the application for stay of proceedings on the ground that the Courts in Hong Kong, being the *forum conveniens*, with costs. (See [1987] 2 MLJ 633).

Lorrain filed an appeal to the Supreme Court. An officer of the bank, Azizah Haji Kassim, in her affidavit affirmed on 8 May 1990 stated that Lorrain's appeal, (Supreme Court Civil Appeal No. 5/87) was listed for hearing in the Supreme Court commencing 13 June 1988. The hearing of the appeal was however postponed to another date to be fixed. Both parties were informed of the postponement. The appeal was subsequently fixed for hearing during the week commencing 12 June 1989. Both parties were informed of the new date. According to Azizah, the hearing on 12 June 1989 was vacated upon a written request for adjournment from Lorrain's solicitors Messrs. James Foong & Anad. A copy of a letter dated 5 May 1989 from the Supreme Court to Lorrain's solicitors (and copied to the plaintiffs' solicitors) notifying Lorrain's solicitors that their request for adjournment of the hearing had been granted was exhibited to the affidavit. Azizah went on to state in the same affidavit that on 1 March 1990 the plaintiff's solicitors wrote to Lorrain's solicitors to request for the convenient dates of Lorrain's Queen Counsel for the purpose of fixing a new hearing date. A copy of the letter was exhibited to the affidavit and is reproduced below:

1 March 1990

Messrs James Foong & Anad
Tingkat 10 Bangunan Yee Seng
No. 15 Jalan Raja Chulan
50200 Kuala Lumpur

Dear Sirs,

Supreme Court Civil Appeal Nos. 5/87 & 6/87

We refer to the abovementioned two appeals to the Supreme Court originally fixed for hearing on 12 June 1989, but taken out at your request since your clients QC was not free on those dates.

Could you please let us know as soon as possible you QC's convenient dates so that the two appeals may be fixed for hearing.

Could you please let us hear from you as soon as possible.

Yours faithfully

On 19 March 1990, Messrs. James Foong & Anad replied stating the reasons for the postponement of the hearing on 12 June 1989. The same letter also stated that Lorrain had instructed them to withdraw the appeal. This letter was also exhibited to Azizah's affidavit. The relevant part of the letter states:

We refer to your letter dated 1 March 1990.

We wish to place on record that the appeals were adjourned at our request primarily because they could not have been disposed off at a regular sitting as arguments with regards to the appeals would have taken about a week. Secondarily, they were adjourned as insufficient notice was given to us to in turn notify leading Counsel.

However, **we are to advise that our present instructions are to withdraw both the appeals**.

(Emphasis added).

In her affidavit affirmed on 24 May 1990, Miss Wong Chee Lin, a legal assistant in the firm of Messrs. Skrine & Co., solicitors for the plaintiffs, averred that on 7 May 1990 her firm received a copy of a letter dated 23 April 1990 sent by Lorrain's solicitors, Messrs. James Foong & Anad to the Senior Assistant Registrar of the Supreme Court requesting that the appeal be fixed for disposal as the parties had agreed that the same was to be withdrawn. A copy of the letter was exhibited to the affidavit. On 14 May 1990, the appeal was duly withdrawn by the solicitors for Lorrain. The appeal was accordingly struck out by the Supreme Court with costs.

In the meantime, on 26 April 1990 the solicitors for the plaintiffs filed a notice to set down the action for trial. Mr. Anad Krishnan contended that the matter was only entered for trial after the present application was served on the plaintiffs' solicitors on 19 April 1990. Mr. Wong Chong Wah told the Court that the case was set down for trial by the plaintiffs only after hearing that Lorrain was going to withdraw the appeal in the Supreme Court. It will be recalled that the plaintiffs' solicitors only knew that Lorrain was going to withdraw the appeal when they received the letter dated 19 March 1990 from Lorrain's solicitors. The letter that was exhibited to Azizah's affidavit shows that the plaintiffs' solicitors received it on 28 March 1990. The matter was set down for trial within a period of less than one month from the date of the receipt of the letter.

Mr. Wong Chong Wah referred to Lorrain's affidavit, where Lorrain stated that "...the plaintiffs have to date taken no steps to enter the matter for trial in compliance with O. 34 of the Rules of the High Court..." and submitted that under O. 34 r. 2(2) Lorrain, too could set down the case for trial. Order 34 r. 2 *inter alia* states:

> 2.(1) Every order made on a summons for directions shall fix a period within which the plaintiff is to set down the action for trial and must contain an estimate of the length of the trial and the approximate number of witnesses, if any.
>
> (2) Where the plaintiff does not, within the period fixed under para. (1), set the action down for trial, the defendant may set the action for want of prosecution and, on the hearing of any such application, the Court may order the action to be dismissed accordingly or may make such order as it thinks just.

As already stated the plaintiffs had filed their summons for directions as early as 2 December 1985 and trial dates were fixed on 24 January 1986.

In my opinion the plaintiffs had acted diligently in prosecuting this action and had actively taken steps to set the matter for trial. The first trial date was vacated on the application of Lorrain although the application was strongly opposed by Counsel for the plaintiffs. The second trial dates were also vacated at the request of Lorrain's Counsel. When Lorrain's application to strike out the writ and statement of claim etc. was dismissed, he filed an appeal. A date of hearing was given but vacated by the Supreme Court itself. Another hearing date was given, but Lorrain applied to have the date vacated. The Senior Assistant Registrar, Supreme Court in her letter dated 5 May 1986 informed the parties that they would be informed of the new hearing date. On 1 March 1990 the solicitors for the plaintiffs wrote to Lorrain's solicitors and it was in reply to that letter that Lorrain's solicitors informed the plaintiffs solicitors that they had received instructions to withdraw the appeal.

I agree with Mr. Wong Chong Wah, that pending the disposal of Lorrain's appeal in the Supreme Court, it would not be practical to set the case for trial. In his submission he said:

> My friend said there is failure to discover. As long as Supreme Court has not disposed of the appeal we did not undertake that task because of the massive number of documents involved and in the event that the Supreme Court should overturn this Court's decision all would have gone to waste.

The delay in the trial of this action is not attributed to the plaintiffs. They have taken active steps to press the matter for trial. In the circumstances Lorrain's application to dissolve the Mareva injunctions cannot succeed.

It will be noted that the situation in the present case is different from those in *Lloyds Bowmaker* case and *Daisystar* case. In *Lloyds Bowmaker* case, no steps were taken to set down the case for trial for a period of two and a half years after the summons for direction was filed. In that case the Court of appeal discharged the injunction. Similarly in *Daisystar* case no diligent steps were taken to bring the case for trial and Mareva injunction was accordingly discharged.

I shall now turn to the alternative prayer in Lorrain's application *viz*., that the Mareva injunctions be varied to allow him to take from his assets Malaysian Ringgit equivalent to sterling £220,000 for legal expenses outstanding and to be incurred in the near future.

The grounds of the application in respect of the alternative prayer as set out in Lorrain's affidavit are as follows:

> After the granting of the Mareva injunctions, he was arrested and had been in Pentonville Prison in London since December 1985. He had been involved in numerous legal proceedings and applications in Malaysia, Hong Kong, United Kingdom and the European Commission, all of which, he said, were crucial to his liberty. He had incurred expenses in the following proceedings:

United Kingdom

1. Committal hearing before Bow Street Magistrate's Court.
2. First *habeas corpus* application before Divisional Court and leave to appeal to the House of Lords.
3. Second *habeas corpus* application before Divisional Court and leave to appeal to House of Lords.
4. Third *habeas corpus* application and leave to appeal to House of Lords.
5. Civil action against the Metropolitan Police for unlawful search and seizure of documents - appeal to the Court of appeal pending.

Hong Kong

1. Application for judicial review of Governor of Hong Kong's request to the UK for my extradition - before a single Judge, Court of Appeal and to the Privy Council.
2. Abuse of process claim in respect of the warrant for my arrest issued by Magistrate Michael Hill on 30 November 1985 - before single Judge in the Supreme Court and the Court of Appeal.
3. Issue of letters of request directed to the Malaysian Courts for taking of evidence from witnesses in Malaysia.
4. Civil proceedings brought by BBMB/BMFL against me.

Malaysia

1. Civil proceedings brought by BBMB/BMFL against me - these are the proceedings in which the Mareva injunctions were granted together with further proceedings Civil Suit No. 438 of 1985 in the High Court of Malaysia at Kuala Lumpur.

European Commission for Human Rights

1. Two petitions, the first one having been dismissed, the second one currently pending.

According to Lorrain, to date, he had incurred legal costs in the various matters, as set out above, of approximately sterling £1,080,000 of which approximately sterling £30,000 remained outstanding. He contended that from the terms of the Mareva injunction there was no provision for payment of his legal expenses generally. He alleged that the order was wrong because a defendant against whom a Mareva injunction had been issued was entitled to a variation to draw sufficient funds for legal expenses. However, he must exhaust his resources outside Malaysia in respect of his legal expenses before making an application to this Court. He said that that was the reason why he had refrained until now from making an application to vary the Mareva injunctions. According to him all but a small portion of his assets were situated in Malaysia. Over the past five years he had sold his properties in London in order to pay his legal expenses *viz:*

146/148 Granville Road, North London.
497 Park West, Edgware Road, London W2.
161 Park West, Edgware Road, London W2.
311 Park West, Edgware Road, London W2.

The proceeds realised from the sale of the said properties together with cash held in several bank accounts came to approximately sterling £1,050,000 which, according to Lorrain had been used to discharge his legal costs.

Lorrain said that he no longer had any assets outside Malaysia with which to pay the outstanding legal costs, nor to continue to pay future legal costs. In mid-1989 he instructed his solicitor, Mr. Anad Krishnan to approach the plaintiffs' solicitors to advise them of his position and to seek their clients' instruction on the matter of varying the Mareva injunctions. Lorrain claimed that he had outstanding legal bills which remained unpaid.

On 2 February 1990, Lorrain filed with the Divisional Court in the United Kingdom a further application for *habeas corpus*. The application was fixed for hearing commencing 11 June 1990. According to him the application was crucial and of considerable importance to him but he would not be able to continue to instruct his lawyers for work which must be done in preparation for the hearing on 11 June. He had also been notified by the European Commission for Human Rights that his pending petition had been referred to the British Government for their views and thereafter he would make him submission in reply and he would have to incur further legal expenses to pursue the matter.

Lorrain further said that the legal costs of the Hong Kong Government in the first *habeas corpus* application, which the Divisional Court had ordered him to pay, had been taxed and the amount he had to pay was sterling £140,000. He was also ordered to pay costs to the Hong Kong Government in his second and third *habeas corpus* application.

According to Lorrain, his most urgent requirements in respect of his legal expenses were:

costs incurred but unpaid	sterling £30,000
costs for *habeas corpus* application and Europe Commission for Human Rights	sterling £50,000
Taxed costs of Hong Kong Government.	£140,000
Total	£220,000

Mr. Wong Chong Wah submitted, firstly, Lorrain in his affidavit merely made a bare declaration that he had no assets outside Malaysia to meet his expenses. Secondly, Lorrain stated that he sold four London properties to meet certain legal expenses but no particulars were given or documents disclosed as to the actual amount of the price of the properties and how the amount realised were used; and thirdly, Lorrain merely made a declaration on bills incurred and that more bills would be incurred in the future. No details were given.

Mr. Anad Krishnan in his submission told the Court that he had letters to support Lorrain's claim for the expenses he required and Mr. Anad Krishnan undertook to file an affidavit to exhibit those letters. On 10 May 1990, he filed the affidavit which was affirmed on 4 May 1990. The affidavit exhibited the letters referred to by Mr. Anad Krishnan. I shall deal with the letters shortly.

It is evident from Lorrain's affidavit that he had substantial assets in the United Kingdom, which assets were not subject to the Mareva injunction, as well as assets in Malaysia, which are the subject matter of the Mareva injunctions. With regard to the assets in the United Kingdom, Lorrain said that he had sold his properties there and from the proceeds realised together with sundry cash held in several bank accounts he had sterling £1,050,000. He claimed that he had used all this money to discharge his legal costs.

Lorrain has not given any evidence how much each of the properties was sold. He has not shown the relevant documents pertaining to the sale of the said properties. He has also not shown in which banks his cash assets were kept and the amount thereof. No documents

were exhibited with regard to his assets in the bank in the United Kingdom. Lorrain also failed to show how he spent the sterling £1,050.000. He merely mentioned legal expenses. There is no evidence before this Court what were the cases he was involved in and whether these cases involve his liberty; what were his legal fees; and how much costs he had to pay?

Now Lorrain is asking this Court to allow him to take his money from his assets in Malaysia in respect of legal proceedings abroad. In order to do that he has to put forward evidence why that course is appropriate in this case. *House of Spring Gardens Ltd. & Anor. v. Waite* [1984] FSR. 227 at p. 288. The burden is on Lorrain to satisfy this Court the detailed value of his assets in the United Kingdom and how he used the assets to pay what he claimed his legal expenses. Secondly, the burden is on Lorrain to prove that he has no more assets outside Malaysia. (See *A v. C* [1981] 1 Lloyd's Lr. 559). Thirdly, the burden is also on Lorrain, who had assets in the United Kingdom as well as in Malaysia to establish circumstances which show that the payment of a liability out of the assets in Malaysia instead of the assets in the United Kingdom is not to conflict with the policy which underlines the granting of the Mareva injunctions. (See *House of Spring Garden supra* and *A v. C supra)*.

In my opinion in Lorrain's affidavit, he has failed to discharge the burden of proof which rests on him.

Mr. Anad Krishnan relied heavily on the decision of Lloyd J in *PCN (Underwriting Agencies) Ltd. v. Dixon & Anor.* [1983] 2 All ER 158. In that case Lloyd J varied the injunction allowing the defendant sufficient funds to meet his reasonable living expenses, pay his outstanding debts and defend himself in the proceedings brought by the plaintiffs. In that case all the assets were within the jurisdiction of the Court and were caught by the Mareva. The only asset available elsewhere was sterling £50 in moneys which was disclosed by the defendant. It should be noted that the defendant in that case set out in his affidavit his financial obligations in considerable detail. The affidavit also exhibited the supporting vouchers. Indeed Lloyd J in his judgment said, "I need not go into the details; they are all contained in the affidavit and the supporting vouchers. The affidavit appears on its face to be candid and truthful..." In my view the situation in *Dixon* case is different from that in the present case.

I shall now examine Anad Krishnan's affidavit and the letters exhibited thereto. The first letter exhibited to the affidavit was dated 3 May 1990 from Messrs. Boase & Cohen, a firm of solicitors in Hong Kong. The letter, which was addressed to Lorrain confirmed that as at February 1990, the "... fees were outstanding ... to leading Counsel in the sum of sterling £6,947 and Junior Counsel in the sum of HK$233,000 ..." The second letter dated 3 May 1990 was from Messrs. Evershed Wells & Hind, a firm of solicitors in London to Mr. Anad Krishnan confirming "...that our outstanding legal fees at mid-March 1990 are in the region of sterling £4,000..." It will be noted that the two letters merely state that certain sums of money were outstanding from Lorrain. The letters did not make any reference to any particular case in which the solicitors had been acting for Lorrain. The two letters, therefore did not help to prove Lorrain's case.

The third letter dated 3 May 1990 was written by Messrs. Boase & Cohen to Lorrain. The subject matter of the letter was "*Habeas Corpus* No. 4." The letter confirmed that junior Counsel had been engaged by Messrs. Boase & Cohen to represent Lorrain in the *habeas corpus* application to be heard on 11 June 1990. The letter states:

Mr. Lorrain E Osman

Dear Sir,

Re: Habeas Corpus No. 4

We are writing to confirm that junior Counsel has been engaged by ourselves to represent yourself in the forthcoming *habeas corpus* application on 11 June.

His expected fees are as follows. He requires a brief of HK$75,000 and refreshers of HK$10,000 for each day. We envisage that the hearing will last 5 days.

Yours faithfully,

Sgd/-
Boase & Cohen

The fourth letter dated 3 May 1990 from Messrs. Evershed Wells & Hind to Mr. Anad Krishnan also referred to the *habeas corpus* application scheduled to be heard on 11 June 1990. The letter also stated the estimated fees for Counsel. The text of the letter is reproduced below:

Dear Anad,

Re: L.E. Osman

I am writing at the request of Mr. Osman to confirm in writing our discussions regarding our estimated costs likely to be incurred in connection with the fourth *habeas corpus* application, scheduled to be heard on 11 June 1990.

The fees of Mr. Martin Thomas QC are estimated to be in the region of £26,000. This firm is not instructing junior Counsel, Mr. Johnny Mok, directly as he is a Hong Kong barrister who has been specially admitted to the U.K. Bar for purposes of the *habeas corpus* application. Mr. Mok will be instructed directly by Messrs. Boase & Cohen.

This firm's fees are likely to be in the region of £15,000.

Should you require any further confirmation please do not hesitate to contact me.

Kind regards,
Yours sincerely,
Jeffrey D. Walton

The fifth letter was written in relation to the bill of costs. This letter, dated 20 March 1990, was written by Messrs. Macfarlanes and addressed to Messrs. Evershed Wells & Hind. The letter is reproduced below:

Dear Mr. Walton,

I apologise for the delay in forwarding a completed copy of the bill to you.

As you will see from the copy bill the costs were allowed at £103,871.63 inclusive of disbursements. The profit element was allowed at £12,154.10. Taking into account the taxing fee the total costs payable by your client amounts to £109,065.23. We will of course be seeking interest at the rate of 10% per annum from the date of the order, being 11 May 1988.

Robin Charman is preparing the receipts to produce to the taxing officer in respect of Counsel's fees and disbursements. The taxing fee of £5,193.60 is being paid and then we will let you have a copy of the taxation certificate.

We look forward to hearing from you with your client's cheque in settlement made payable to Macfarlanes.

Yours sincerely,

Sgd/-
Caroline M. Adkins

The sixth letter was from Messrs. Evershed Wells & Hind to Mr. Anad Krishnan. That letter, too, referred to the bill of costs. The letter states:

Dear Anad,

Re: L.E. Osman

I am writing to confirm the position with regard to the fees of the Government of Hong Kong in connection with the first *habeas corpus* application.

The full sum due as taxed is £109,065.23, to which must be added interest at the rate of 15% per annum from the date of the order, being 11 May.

I therefore calculate that in addition to the sum of £109,065.23, interest of £32,720 will be payable on the basis that payment is made within the next days. The taxation certificate has not yet been received by me.

Kind regards,

Yours sincerely,

Sgd/-
Jeffrey D. Walton

The fifth and sixth letters quoted above relate to the taxed costs due to the Hong Kong Government. According to the sixth letter the taxed costs was in respect of the first *habeas corpus* application.

From Lorrain's affidavit and from the third letter exhibited to Anad Krishnan's affidavit I find that Lorrain has a pressing need to instruct his solicitors in respect of the fourth *habeas corpus* application which is due for hearing on 11 June 1990. I also find that he urgently needs funds for his legal expenses in respect of his case in the European Commission for Human Rights. In my opinion it is appropriate for Lorrain to ask this Court to allow him to use his assets within jurisdiction to pay for the amount asked for. To deny him to use his assets for this purpose may amount to denying him for proceeding with the fourth *habeas corpus* application and with the European Commission for Human Rights. Both cases involve the question of Lorrain's liberty.

With regard to the rest of the money applied for by Lorrain, I find that Lorrain has not discharged the burden of proof, the onus of which rests on him. The Court, therefore, cannot allow the application in the absence of such proof. For the reasons stated above I order that Lorrain's application to dissolve the Mareva injunctions be dismissed. With regard to the alternative prayer, I order that Lorrain is only allowed to take from his assets in Malaysia in the sum of sterling £50,000 for the purpose of the fourth *habeas corpus* application and for the European Commission of Human Rights. The costs of this application shall be costs in the cause.

Also found at [1990] 2 CLJ 462